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# **Personnel Law: Civilian Personnel & Military Personnel**

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Quarterly Digests Of Unpublished Decisions Of  
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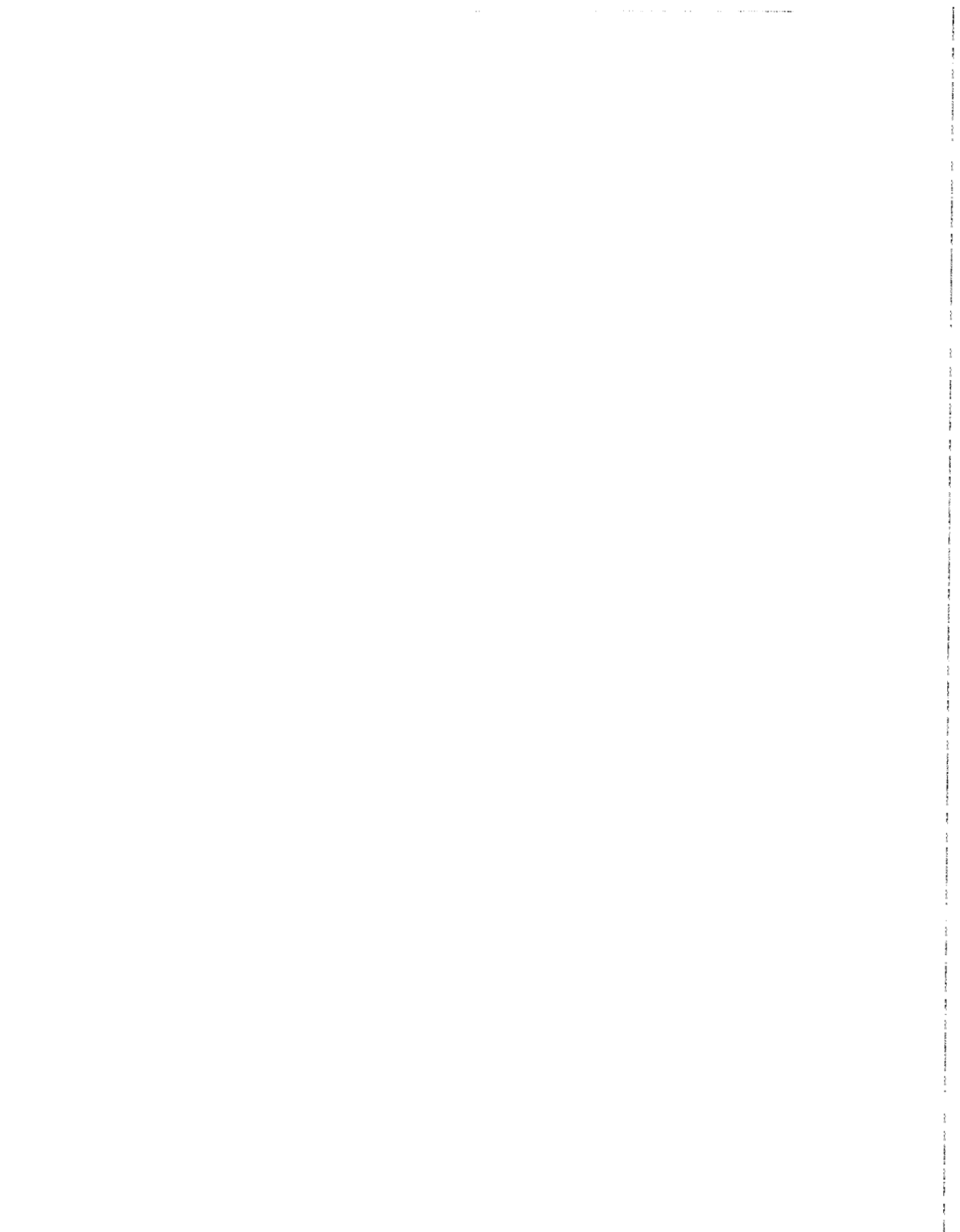
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July-September 1984



# **UNITED STATES GENERAL ACCOUNTING OFFICE**

**CHARLES A. BOWSHER**

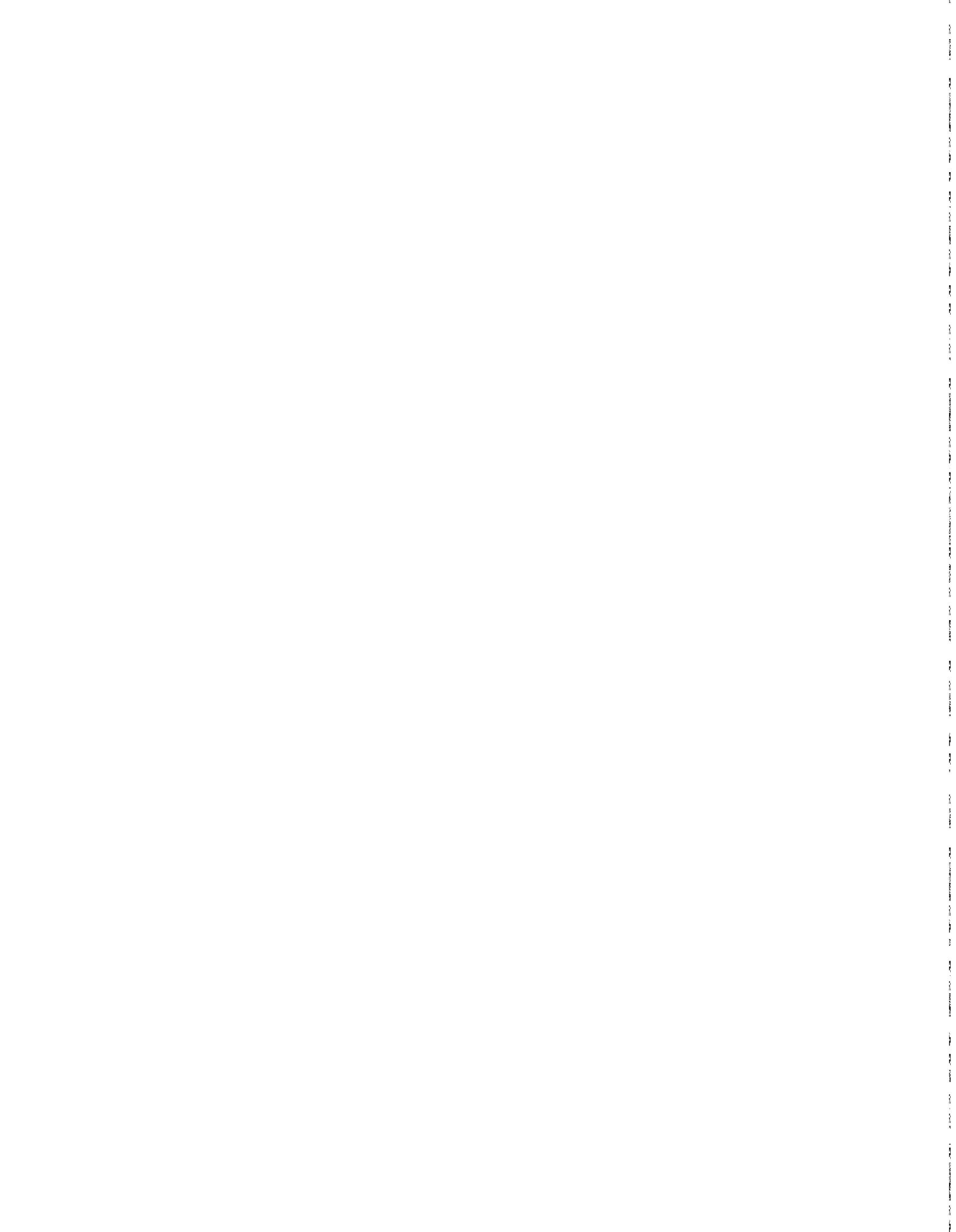
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VOLUME XXVII

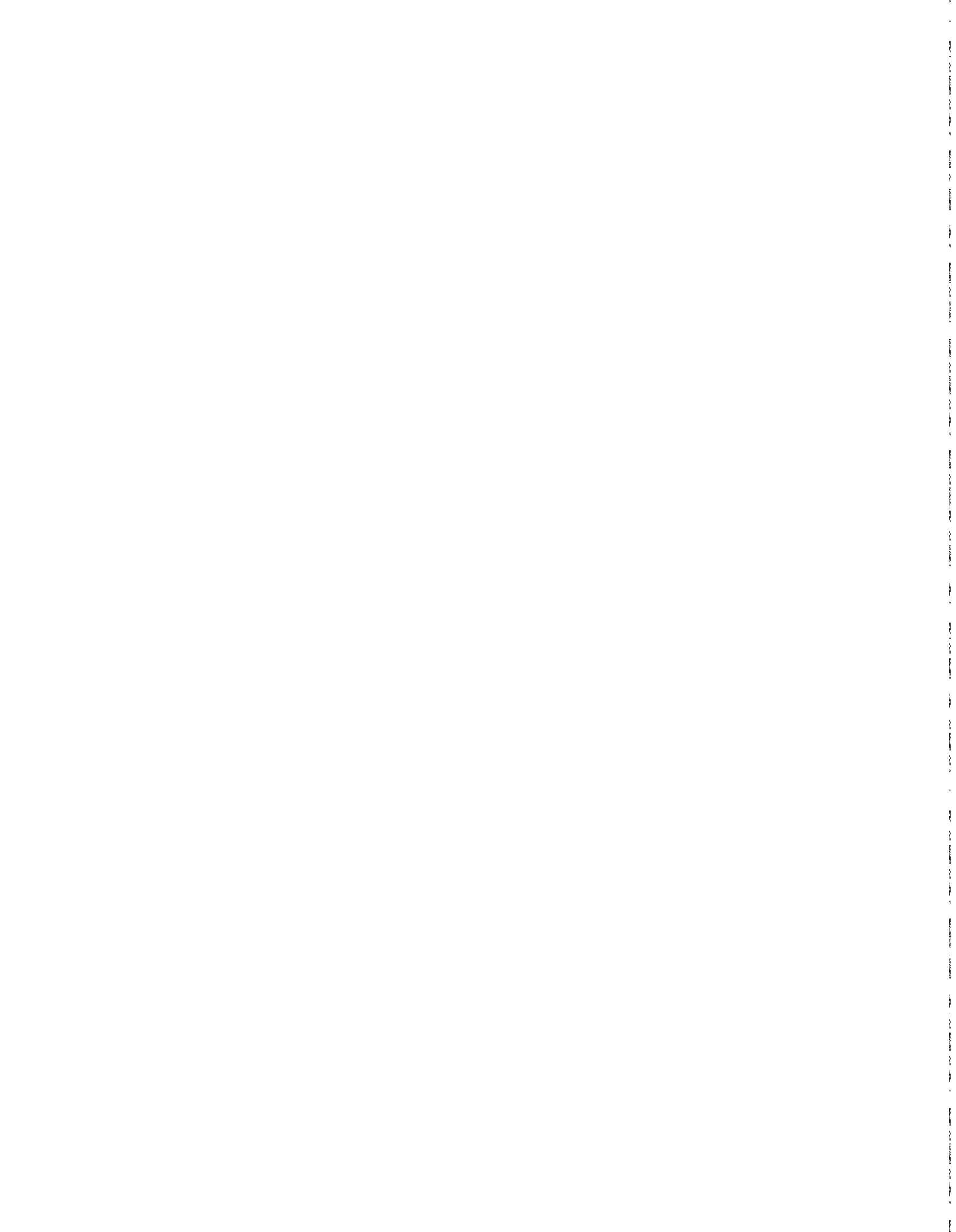
No. 4

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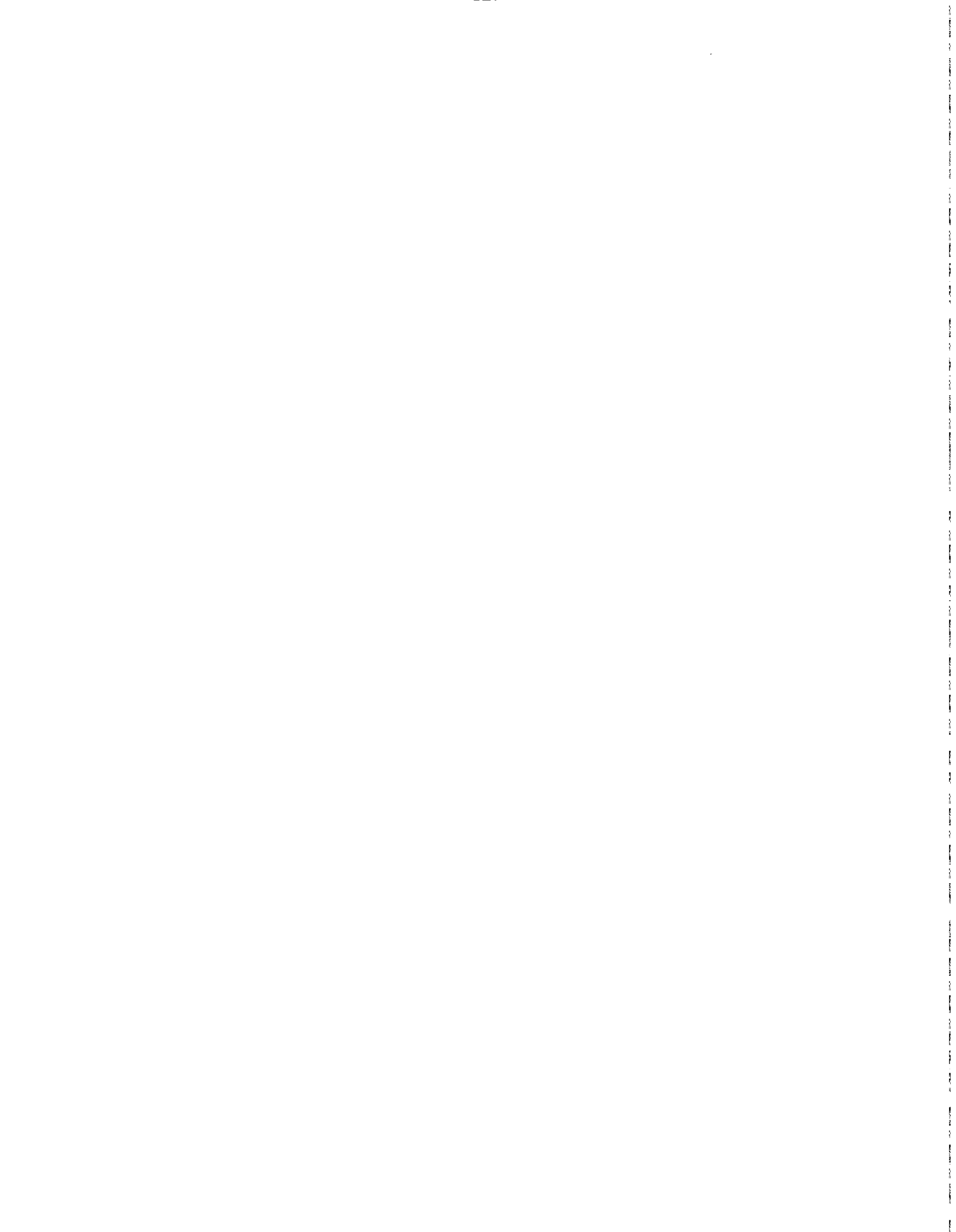
*Compiled in the  
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*B-214886 July 3, 1984*

*TRAVEL EXPENSES--TEMPORARY DUTY--DEVIATION FOR PERSONAL REASONS*

An employee who is stationed in Portsmouth, New Hampshire, and resides in Portland, Maine, was assigned to temporary duty in Arlington, Virginia. Based on agency officials' verbal approval, which was later confirmed in writing, the employee traveled to Kansas City, Missouri, on the Thanksgiving holiday weekend for personal reasons. The employee may not be reimbursed for his transportation expenses to and from Kansas City, since such travel was not to the employee's headquarters or place of abode from which he commutes daily to his official station. FTR paragraphs 1-7.5c and 1-8.4f. Furthermore, the Government cannot be bound by the erroneous acts or advice of its agents.

*B-214164 July 9, 1984*

*OFFICERS AND EMPLOYEES--TRANSFERS--REAL ESTATE EXPENSES--APPRAISAL FEES*

A transferred employee agreed to purchase as a residence at his new duty station a structure being extensively renovated for that purpose which required as a condition of financing additional site inspections. Basic reimbursement for appraisal expense was allowed by the agency, but expense of additional inspections disallowed. On reclaim, disallowance is sustained. Under FTR para. 2-6.2d, only expenses associated with existing residence purchase are allowed, and while renovation of an existing structure is not new residence construction, it is analogous so as to preclude reimbursement.

*OFFICERS AND EMPLOYEES--TRANSFERS--REAL ESTATE EXPENSES--DETERMINATION OF PRO RATA REIMBURSEMENT--MULTIPLE OCCUPANCY DWELLING*

A transferred employee purchased as a residence at his new station a structure being extensively reno-

vated for that purpose. The employee is occupying the second and third floors as his residence, reserving the first floor for tenant occupancy, a commercial venture. Under FTR para. 2-6.1f, expenses of residence purchase shall be prorated for multiple occupancy dwellings which are only partially occupied by the employee. Since employee was not occupying one-third of the structure, expenses related to residence purchase which would be otherwise reimbursable to him are to be reduced by one-third. 55 Comp. Gen. 747 (1976).

*B-200460 July 10, 1984*

*CLAIMS--AGAINST UNITED STATES--BURDEN OF PROOF*

An employee separated by the State Department claims compensation for 80 hours unpaid annual leave, states that she does not recall receiving a salary check made payable to her, and questions whether the endorsement on the copy of that check is hers. The State Department has shown that the employee received annual leave lump-sum payments amounting to 271 hours and the employee has provided no basis to show she is entitled to a further 80 hours. Her claim is denied since the burden of proof is on the claimant to establish her claim. The question of whether the endorsement on the salary check was forged should be referred to the Examiner of Questioned Documents, Department of the Treasury.

*B-213868 July 12, 1984*

*SUBSISTENCE--ACTUAL EXPENSES--ITEMIZATION OF ACTUAL FOOD EXPENSES--REQUIREMENT*

An employee, who is on a temporary duty assignment and authorized actual expenses, may not be reimbursed for meal expenses based on estimated grocery expenditures and must provide an itemization of actual daily food expenses. That itemization may be based on a proration of grocery costs actually incurred.

*SUBSISTENCE--PER DIEM--RATES--LODGING COSTS--STAYING WITH FRIENDS, RELATIVES, ETC.*

Where an employee, who stayed in non-commercial lodging while on a temporary duty assignment, has not satisfied

his agency that his claim is for lodging costs actually incurred, the agency may require additional information, including cancelled checks, before paying claim.

*B-208302 July 17, 1984*

*OFFICERS AND EMPLOYEES--TRANSFERS--REAL ESTATE EXPENSES--  
CONSTRUCTION COSTS*

An employee incurred notorial fee, fees for procuring certificates and researches, and recordation fees for both the closing on a lot on which he built his residence and the closing on the residence itself. The Federal Travel Regulations para. 2-6.2d limits reimbursement to expenses comparable to those reimbursable in connection with the purchase of existing residences and does not permit reimbursement of expenses which result from construction. Since the enumerated duplicate fees were incurred because the employee chose to build a residence as opposed to purchasing an existing one, and since he has already been reimbursed these fees for closing on the lot, he may not be reimbursed those fees associated with the closing on the completed house. However, the other expenses listed, which are claimed only for the settlement on the completed residence may be paid if they are normally allowable.

*B-214205 July 17, 1984*

*COMPENSATION--ADDITIONAL--ENVIRONMENTAL PAY DIFFERENTIAL--  
HAZARDOUS DUTY--ADMINISTRATIVE DETERMINATION*

An elevator mechanic at the National Park Service's Carlsbad Caverns is not entitled to 50 percent environmental differential pay for working on elevator cars, under the provisions of Category 15 of Appendix J, Federal Personnel Manual Supplement 532-1. The agency decision denying a 50 percent environmental differential found that an unsure footing or unstable structure did not exist in the work area because there were no slippery substances thereon and because the car swayed no more than 1 inch while the mechanic was operating the car in a fixed position. We will not overrule the agency's

decision absent clear and convincing evidence negating the information in the agency report or indicating that the agency determination was arbitrary or capricious and no such evidence is presented here.

*B-212148 July 23, 1984*

*DECEDENTS' ESTATES--COMPENSATION--CLAIMANT'S DOUBTFUL MARRIAGE STATUS*

Deceased employee, James A. Smalls; entered into ceremonial marriage with Juanita Stephens on March 1, 1955. Written report by Clerk of Court, Charleston County, South Carolina, states there is no record of divorce between James and Juanita in that jurisdiction. James Smalls entered into ceremonial marriage with Susie (now Susan) Wright on March 12, 1959. Although second marriage is presumed to be valid, such presumption is rebutted by showing that there is no record of divorce between James and Juanita. Under section 20-1-80, Title 20, Code of Laws of South Carolina (1976), all marriages contracted while either of the parties has a former wife or husband living are void. Hence, James' marriage to Susan is void, and she is not the legal widow of the deceased employee, and is not entitled to payment of his unpaid compensation.

*B-212990 July 23, 1984*

*OFFICERS AND EMPLOYEES--PROMOTIONS--RETROACTIVE--ENTITLEMENT--ERRONEOUS CLASSIFICATION*

An employee was reassigned from a merit pay position to a General Schedule position. Within 2 months, the General Schedule position was placed in the merit pay system, and the agency asks if the employee's merit pay status should be made retroactive to the time he was first placed in the General Schedule position. Agencies have authority to determine coverage under the merit pay system, and we will not require retroactive correction of designations where there was no administrative error which would warrant correction of the personnel action.

*B-213741 July 23, 1984*  
*OFFICERS AND EMPLOYEES--TRANSFERS--REAL ESTATE EXPENSES--*  
*LOAN ASSUMPTION FEE*

Employees, who assumed the previous owners' mortgages in purchasing residences upon change of duty station, were assessed a loan assumption fee and a service charge, respectively. Where the fees are 1 percent and 1.5 percent of the loan balances, respectively, and the lending institutions state that they have the same meaning as a loan origination fee when a new loan is being made, the fees are similar to a loan origination fee and may be reimbursed under revised regulations effective October 1, 1982.

*B-214245 July 23, 1984*  
*STATUTES OF LIMITATION--CLAIMS--DATE OF ACCRUAL--*  
*COMPENSATION PAYMENTS--BACKPAY*

Several years after they were hired, the employing agency determined that the salary of two employees should have been based on their highest previous rate as was required by the applicable agency regulations. The resulting claims for retroactive payment are continuing claims that accrued on the dates the services were rendered by the employees and not the date that the agency determined that its highest previous rate policy had not been followed. Accordingly, in view of the statute of limitations set forth at 31 U.S.C. 3702(b), the agency had no authority to allow any part of the claims more than 6 years prior to the date the agency made payment.

*B-214533 July 23, 1984*  
*CLAIMS--EVIDENCE TO SUPPORT--ABSENCE OF RECORD--DISALLOWANCE*  
*OF CLAIM--COMPENSATION*

A former employee of the Federal Home Loan Bank Board claims entitlement to travel and other overtime compensation for calendar year 1971. The claim which was received in the General Accounting Office on February 15, 1977, is not barred from consideration for the period after February 15, 1971. However, the claim is disallowed since, in the intervening period between the

performance of the duty claimed and the date claim was presented to GAO for consideration, the records necessary to establish or refute the claim have been lost or destroyed. In the absence of such government records, the burden of proof is on the claimant, and he has not furnished any documentation of his entitlement to payment.

*STATUTES OF LIMITATION--CLAIMS--FILING IN OTHER THAN GAO--  
DOES NOT MEET REQUIREMENTS OF 10/9/40 ACT, AS AMENDED*

A former employee of the Federal Home Loan Bank Board claims entitlement to travel and other overtime compensation during calendar years 1969, 1970, and 1971. The claims, which were apparently filed with his agency in 1972, were not received in the General Accounting Office until February 15, 1977. Therefore, that portion of the claims arising before February 15, 1971, may not be considered since 31 U.S.C. 3702(b)(1) (1982) (formerly 31 U.S.C. 71a), bars consideration of a claim presented to GAO more than 6 years after the date the claim accrued. Further, filing with an administrative office does not satisfy the requirement of the barring act. Frederick C. Welch, 62 Comp. Gen. 80 (1982).

*B-214558 July 23, 1984*

*COURTS--JURORS--FEES--GOVERNMENT EMPLOYEES IN STATE COURTS--  
EXPENSE ALLOWANCE V. JURY FEE--COMPENSATION DEDUCTION*

An employee served as juror in a State court of Bexar County, Texas. The state statute established a minimum payment of \$6 and a maximum payment of \$30 for each day or fraction of a day each juror serves while giving counties authorization to determine the amount paid for jurors. The employee is not entitled to travel expenses claimed in the amount credited against his pay for service as a juror under 5 U.S.C. 5515.

*B-214863 July 23, 1984*

*COURTS--JURORS--FEES--GOVERNMENT EMPLOYEES IN STATE COURTS--  
EXPENSE ALLOWANCE V. JURY FEE--COMPENSATION DEDUCTION*

By a 1979 amendment to the Texas statute which authorizes pay of jurors, the term "per diem" was substituted.

ted for the term "compensation," which was used in the derivative statute. In spite of this change in the statutory terminology, federal employees who are entitled to leave for jury duty while serving as jurors in Texas state courts may not retain any amount received for such jury service under the relevant Texas statute, because there is no indication in that statute that the fees, or any portion thereof, are intended to be an expense allowance or reimbursement for travel.

*B-214243 July 26, 1984*

*OFFICERS AND EMPLOYEES--TRANSFERS--REAL ESTATE EXPENSES--  
LOAN ORIGINATION FEE*

Employee who was transferred effective December 20, 1981, incurred loan origination and VA funding fees incident to purchase of home at new duty station. His loan origination and VA funding fees are finance charges under 15 U.S.C. 1605(a) and under Regulation Z (12 C.F.R. 226.4) and are not reimbursable under para. 2-6.2d of the Federal Travel Regulations, FPMR 101-7 (September 1981) (FTR) in effect at the time of the transfer. The 1982 amendment to FTR paragraph 2-6.2d allowing reimbursement of a loan origination fee is applicable only for employees whose effective date of transfer is on or after October 1, 1982. Since the employee's transfer took place prior to that date, the amendment is not applicable to him.

*B-214255 July 30, 1984*

*OFFICERS AND EMPLOYEES--TRANSFERS--REAL ESTATE EXPENSES--  
LOAN ASSUMPTION FEE*

Employee transferred to a new duty station effective July 5, 1983, and, upon purchasing a residence, he incurred a loan assumption fee. Paragraph 2-6.2d(1) of the Federal Travel Regulations, as amended effective October 1, 1982, permits reimbursement of loan origination fee and similar fees and charges, but not items which are considered to be finance charges. Loan assumption fee may be reimbursed where it is assessed instead of a loan origination fee, and involves charges for services similar to those covered by a loan origination fee.

*B-214266 July 30, 1984*  
*COMPENSATION--DOWNGRADING--CLAIM FOR HIGHER GRADE SALARY*

Employee was hired by the Navy, and his pay was set at step 8 of grade GS-15 based on superior qualifications authority in 5 U.S.C. 5333(a). His pay was later reduced to step 1 based upon instructions of Office of Personnel Management (OPM) that military retired pay cannot be considered in establishing an advanced rate under a superior qualifications appointment. We hold that the Navy exceeded its authority as delegated by OPM by considering military retired pay as current earnings for a superior qualifications appointment. The employee's claim for restoration of his advanced rate is denied.

*B-215327 August 3, 1984*  
*TRAVEL EXPENSES--MISCELLANEOUS EXPENSES--WEARING APPAREL, ETC.*

Purchases of toilet articles and personal clothing by an employee while performing temporary duty in emergency circumstances do not constitute miscellaneous expenses necessarily incurred by a traveler in connection with official business under the Federal Travel Regulations nor can such purchases be considered special clothing and equipment for which reimbursement could be authorized under 5 U.S.C. 7903.

*B-214337 August 6, 1984*  
*LEAVES OF ABSENCE--ANNUAL--RECREDIT OF PRIOR LEAVE--FORFEITED ANNUAL LEAVE*

Employee went on sick leave on October 23, 1981, through the end of leave year 1981 and forfeited 104 hours of annual leave. Restoration of the forfeited leave and additional lump-sum leave are denied since the leave was not scheduled and the employee knew he was responsible to schedule the leave to avoid forfeiture. In addition, this case does not fall within our decisions which presume scheduling of the leave during an extended period of absence due to illness. Distinguishes B-182608, Feb. 19, 1976, B-187777, Feb. 27, 1979, 63 Comp. Gen. 180, B-193431, Aug. 8, 1979.



*B-214362 August 7, 1984*  
*OFFICERS AND EMPLOYEES--TRANSFERS--REAL ESTATE EXPENSES--*  
*BROKER'S FEES*

A transferred employee purchased a lot suitable for residence construction near his new duty station. His claim for reimbursement of a broker's commission for finding the lot is denied since Federal Travel Regulations (FTR) para. 2-6.2a specifically prohibits such commission in connection with the purchase of a home at the new duty station. Although the commission reimbursement prohibition in FTR para. 2-6.2a specifically relates to purchase of a home, by implication it includes the lot on which the home is to be situated. Real estate expenses for the purchase or sale of a lot are allowed only when the lot is integrated with a dwelling or used as a mobile home site.

*B-212029 August 13, 1984*  
*SUBSISTENCE--ACTUAL EXPENSES--MEALS*

An Internal Revenue Service (IRS) employee who had been in an actual subsistence expense travel status submitted claim for meal expenses which was found to be excessive based on survey of meal expenses of other employees on same temporary training assignment. IRS's reduction of employee's meal expense reimbursement to the average amount reimbursed to other employees attending same training program is arbitrary. Since the IRS has failed to substantiate a basis for the reduction, the employee's claim is allowed.

*TRAVEL EXPENSES--RETURN TO OFFICIAL STATION ON NONWORKDAYS--*  
*ADMINISTRATIVE DETERMINATION--COST ANALYSIS*

An employee on temporary duty rented lodging by the month rather than by the day, but actually occupied them for a lesser period because he voluntarily returned home on weekends. He may be reimbursed for his weekend return travel under para. 1-8.4f of the Federal Travel Regulations up to actual subsistence expenses which would have been allowable had he remained at his duty site for the weekend, including the average cost of lodging based on the monthly rental.

B-214396 August 15, 1984

TRAVEL EXPENSES--PRIVATE PARTIES--INVITATIONAL TRAVEL ON  
FEDERAL GOVERNMENT BUSINESS

A private individual who was invited to a fact-finding conference on a discrimination charge under Title VII of the Civil Rights Act of 1964, traveled to the conference which was cancelled on short notice. Due to various factors he did not receive timely notice of the cancellation prior to performing the travel. His claim for travel expenses and compensation for such travel may not be allowed in the absence of a statute or regulation which would authorize payment.

B-214724 August 15, 1984

OFFICERS AND EMPLOYEES--TRANSFERS--REAL ESTATE EXPENSES--  
LOAN ASSUMPTION FEE

An employee incurred a 1 percent loan assumption fee upon purchasing a residence at his new duty station. The agency denied his claim for reimbursement on the basis that the fee was a finance charge and therefore not reimbursable under Federal Travel Regulations para. 2-6.2d was amended to specifically permit reimbursement of loan origination fees and "other fees and charges similar in nature" for transfers effective after October 1, 1982. The loan assumption fee involved here is similar in nature to a loan origination fee since it was intended to cover the same type of services. Accordingly, the employee may be reimbursed if otherwise proper.

B-214539 August 16, 1984

TRAVEL EXPENSES--ILLNESS--DISTRESS DUE TO TRAGIC FAMILY  
NEWS

An employee of the Department of Energy assigned to temporary duty in Seattle, Washington, upon arrival at the Seattle airport, was informed of his father's death. Based on the administrative determination that he was incapable of representing the Department at the meeting he had been assigned to attend, the employee was ordered to return to Washington, D.C. and he was placed on sick leave. The

employee's return travel expenses may be paid on the basis of the agency's determination that the employee became ill and was incapacitated for the purpose of performing his temporary duty assignment.

*B-213380 August 20, 1984*

*LEAVES OF ABSENCE--ANNUAL--RESTORED--USE--TIME LIMITATION*

An employee has no rights to further restoration and lump-sum payment of unused forfeited and restored 1977 leave, which was forfeited again at the end of the 1980 leave year. Although agency personnel gave him erroneous advice concerning his restored leave and failed to fix the date, as required by the regulations, for the running of the 2 years in which to use-or-lose his restored leave, no legal authority exists for further restoration of leave once forfeited a second time.

*B-214885 August 20, 1984*

*COMPENSATION--PERIODIC STEP-INCREASES--EQUIVALENT INCREASES--ELIGIBILITY FOR WITHIN-GRADE INCREASE*

An individual who was reemployed by the Department of the Navy following service with TVA disputes the Navy's determination that the cost-of-living allowance (COLA) and within-grade increase he received at TVA constituted an "equivalent increase" under 5 U.S.C. 5335(a)(1982) and 5 C.F.R. 531.403 (1984). We find that the COLA may be regarded as an "equivalent increase" since it was granted administratively, and, therefore, does not fall within the exclusion for statutory pay increases which is provided in 5 U.S.C. 5335(d). The employee's within-grade increase at TVA represents his last "equivalent increase," requiring the commencement of a new waiting period for within-grade advancement.

*COMPENSATION--RATES--HIGHEST PREVIOUS RATE--TRANSFERS--RATE APPLICABLE*

An employee transferred from a grade GS-12, step 4, position with the Department of the Navy to a grade SD-3, step 4, position with the Tennessee Valley Authority (TVA),

subsequently receiving a within-grade increase to grade SD-3, step 5. The Navy reemployed him in step 4 of grade GS-12, the lowest step which did not exceed his highest previous salary rate at TVA. The employee claims a retroactive step adjustment to step 5 since he had attained step 5 of grade SD-3 at TVA. The claim may not be allowed because the highest previous rate rule applies only to the salary rate earned by an employee, not to the relative step level he had attained before reemployment.

*B-214412 August 23, 1984*

*TRANSPORTATION--AUTOMOBILES--OVERSEAS EMPLOYEES--OWNERSHIP REQUIREMENT*

Although State Department employee states that he was owner at time automobile was shipped from factory, his claim for transportation costs of new vehicle from Japan to Thailand is disallowed since he had not paid full purchase price, nor produced any other clear evidence that legal title of automobile had passed to him at time of shipment as required by section 165.1, Volume 6, Foreign Affairs Manual.

*B-214531 August 24, 1984*

*OFFICERS AND EMPLOYEES--PROMOTIONS--RETROACTIVE--RULE*

A former employee of the Merit Systems Protection Board is not entitled to a retroactive promotion from grade GS-7 to GS-8 on the basis that she interviewed for GS-8 position. As a general rule a personnel action cannot be made effective retroactively so as to increase an employee's compensation.

*B-214631 August 24, 1984*

*COMPENSATION--REMOVALS, SUSPENSIONS, ETC.--BACKPAY-- INVOLUNTARY LEAVE--PENDING APPROVAL OF AGENCY DISABILITY RETIREMENT APPLICATION*

Agency placed employee on involuntary leave following fitness-for-duty examination and filed for her disability retirement. After disability retirement was denied by Office of Personnel Management (OPM), employee claimed backpay for period of involuntary leave and leave without pay.

Claim is denied since OPM did not overturn medical evidence submitted by agency and agency action was based on competent medical evidence.

*B-214555 August 28, 1984*

*OFFICERS AND EMPLOYEES--TRANSFERS--REAL ESTATE EXPENSES--  
BROKER'S FEES*

Transferred employee of the Veterans Administration (VA) seeks reimbursement of 7 percent real estate broker's commission he paid in connection with the July 1983 sale of his residence in Gulfport, Mississippi, near former permanent duty station. The VA determined that 6 percent was the prevailing rate customarily charged in Gulfport, Mississippi, and reimbursed the employee at that rate. The Federal Travel Regulations in paragraph 2-6.2a require that the applicable rate is the rate generally charged by real estate brokers in the area, not the rate charged by the particular broker used by the employee. If employee, to expedite sale, pays commission greater than that usually charged, he cannot be reimbursed for the extra commission.

*B-206246 August 29, 1984*

*OFFICERS AND EMPLOYEES--TRANSFERS--REAL ESTATE EXPENSES--  
PRIOR TO OFFICIAL NOTICE OF TRANSFER*

Employee anticipated transfer to a new position at a new duty station and offered his residence at old duty station for sale. This residence was sold before the new position vacancy was announced, before the employee was selected, and before he was first definitely informed of the transfer. In the absence of previously existing administrative intent to transfer the employee, the real estate sales expenses may not be paid.

*B-214596 August 29, 1984*

*ESTOPPEL--AGAINST GOVERNMENT--NOT ESTABLISHED--PRIOR  
ERRONEOUS ADVICE, CONTRACT ACTIONS, ETC.*

Civilian employee erroneously advised and reimbursed for household goods shipping expenses must repay

amounts erroneously paid since no Government agency or employee has the authority to waive a statutory provision, and the Government is not estopped from repudiating erroneous advice or authorization of its agents. Since Federal employees are appointed and serve only in accordance with statutes, relocation expenses are governed by statute, not by principles of contract law. The fact that agency officials erroneously authorized reimbursement of expenses does not prevent recoupment, since a payment not authorized by statute will not form the basis for estoppel against the Government.

*TRANSPORTATION--HOUSEHOLD EFFECTS--WEIGHT LIMITATION--  
EXCESS COST LIABILITY*

Civilian employee of Department of Air Force transferred in October 1979 was erroneously advised and reimbursed for shipment of household goods in excess of applicable maximum weight limitation of 11,000 pounds for civilian employees under 5 U.S.C. 5724(a) (1976). Employee must repay amount of excess weight charges since additional weight allowance provided by 37 U.S.C. 406 (1976) applies only to members of the uniformed services, not to civilian employees.

*TRANSPORTATION--HOUSEHOLD EFFECTS--WEIGHT LIMITATION--  
EXCESS COST LIABILITY--WAIVER--PROPRIETY*

The indebtedness of a civilian employee erroneously advised concerning his maximum weight allowance may not be considered for equitable waiver because excess weight charges incurred in the shipment of household goods are transportation expenses and are expressly precluded from the waiver provisions of 5 U.S.C. 5584 (1982). And, where there is present ability to pay, collection of a debt must be attempted.

*B-202626 September 4, 1984*

*COMPENSATION--HOLIDAYS--PREMIUM PAY*

We affirm our prior decision that when an employee's regular daily tour of duty covers portions of 2 calendar days,

one of which is his designated holiday, all of that tour of duty is considered to occur during the employee's holiday. Even though part of the holiday tour may begin on a day during which the employee has already worked 8 hours, that portion of the holiday tour of duty is not considered overtime under 5 U.S.C. 5542, which would preclude it from being considered holiday work. See 5 U.S.C. 5546(b).

*B-214757 September 5, 1984*

*OFFICERS AND EMPLOYEES--TRANSFERS--NONREIMBURSABLE EXPENSES--MORTGAGE DISCOUNTS, "POINTS," ETC.*

In connection with his purchase of a house at his new duty station a transferred employee was charged a loan application fee of \$200 plus a loan origination fee of 3 percent of the loan amount, half of which was paid at the time the lending institution committed itself to loan this money and the other half at settlement. The agency reimbursed the \$200 fee plus 1/2 of the loan origination fee. That settlement is sustained since in the circumstances of this case any additional payment would amount to reimbursement for a cost in the nature of a loan discount or points.

*OFFICERS AND EMPLOYEES--TRANSFERS--TEMPORARY QUARTERS--TIME LIMITATION*

The Federal Travel Regulations require that in order to qualify for expense reimbursement occupancy of temporary quarters must begin not later than 30 days after the employee reports to his new duty station or not later than 30 days from the date the family vacates the residence at the old duty station. A transferred employee who stayed with friends for more than 30 days after he and his family traveled to the new station may not be reimbursed for temporary quarters and subsistence expenses incurred when they stayed in a motel after time to qualify had expired.

*B-214904 September 5, 1984*

*TRAVEL EXPENSES--OVERSEAS EMPLOYEES--AUTOMOBILE SHIPMENT--  
DELIVERY OR PICKUP OF VEHICLE--DELAYS--ACTUAL EXPENSE CLAIM*

Employee transferred from Germany to Richmond, Virginia, claims travel expenses and mileage for three round trips from the Richmond area to Norfolk in order to pick up his automobile which had been transported back to the United States at Government expense. The employee may not be allowed reimbursement for more than one round trip to Norfolk. As authorized by the applicable provision in Volume 2 of the Joint Travel Regulations, he may be allowed transportation expenses for one trip to the port at Norfolk and mileage for one trip back to the Richmond area.

*TRAVEL EXPENSES--OVERSEAS EMPLOYEES--TRANSFERS--AGENCY  
WITHIN THE U.S.*

Employee of Defense Logistics Agency stationed in Germany was transferred to a duty station in Richmond, Virginia. The employee traveled to a place near his home of record in California prior to traveling to his new duty station in Richmond. The employee may not be reimbursed for his travel between Richmond and California. If prior to his departure from his overseas duty station the employee accepts a transfer to a duty station within the United States, he is entitled only to the travel and transportation expenses to his new official station.

*B-215221 September 5, 1984*

*TRANSPORTATION--HOUSEHOLD EFFECTS--WEIGHT LIMITATION--  
EXCESS COST LIABILITY--NOTICE OF LIABILITY*

An employee who was transferred in May 1983 shipped 16,700 pounds of household goods by a Government Bill of Lading. He was assessed charges of \$1,568.02 for the weight in excess of the 11,000-pound statutory maximum then in effect. The employee may not be relieved of his liability for the cost of shipping household goods in excess of 11,000 pounds even though he was not given an estimate of the weight of his household goods in advance of shipment.



B-214482 September 7, 1984  
OFFICERS AND EMPLOYEES--TRAINING--TRANSPORTATION OR PER  
DIEM--REVOCATION

Civilian employee of the Defense Logistics Agency assigned to long-term training at the Armed Forces Staff College in Norfolk, Virginia, was authorized and paid a per diem rate that included a housing allowance for Government family quarters. Agency now seeks to limit the per diem housing allowance to the single occupancy rate thereby placing the employee in debt to the Government. There is no legal justification to revoke and retroactively modify the employee's per diem entitlement, which vested at the time the assignment was performed under competent travel orders, where employee's authorized per diem entitlement at family quarters rate incident to long-term training did not clearly conflict with law or regulation and agency's unwritten, unarticulated policy, which was not ascertainable by employee, is not "apparent error" to justify retroactive modification of travel order.

B-202291 Sept. 17, 1984  
COMPENSATION--BACK PAY--SUIT TO RECOVER--FINAL COURT  
JUDGMENT, ETC.--RES JUDICATA

Employees seek a Comptroller General decision on their entitlement to backpay, additional leave and pension benefits. The General Accounting Office adheres to the doctrine of res judicata to the effect that a valid judgment of a court on a matter is a bar to a subsequent action on that matter before the General Accounting Office. 62 Comp. Gen. 399 (1983). Since in Charles W. Bird, et al. v. United States, No. 94-81C (Ct. Cl. Aug. 6, 1982) (order granting motion to dismiss), it was previously decided that the employees failed to present a claim for a money damages remedy for their alleged improper classification as intermittent employees, the General Accounting Office will not consider their claim.

*B-216019 September 21, 1984*  
*LEAVES OF ABSENCE--COMPENSATORY TIME--PROPRIETY OF*  
*SUBSTITUTING FOR OVERTIME*

In response to a request from the Comptroller, Navy Department, we informally advise Navy that a General Schedule employee may not take compensatory time off for holiday work when the employee is entitled to holiday premium pay under 5 U.S.C. 5546(b). If the work an employee performs on a holiday is irregular or occasional overtime and is not compensable at holiday pay rates, the employee may take compensatory time off for such irregular or occasional overtime. There is no authority to grant wage grade employees compensatory time off in lieu of overtime pay. Wage grade employees must be paid for all overtime worked at the prescribed rates.

*B-183478 September 24, 1984*  
*COMPENSATION--OVERTIME--EARLY REPORTING AND DELAYED*  
*DEPARTURE--GUARDS--CLAIMS ON BASIS OF BAYLOR CASE*

Claimants filed claims for overtime with GAO on May 23, 1973. At that time, the Barring Act, 31 U.S.C. 71a (1970), permitted claims to be filed with GAO within 10 full years after accrual. In James E. Alger, et al., v. United States, Ct. Cl. No. 64-75, June 6, 1983 the Government acknowledged that claimant guards had worked overtime for which they had not been compensated, and judgment was entered by stipulation for the period of March 7, 1969, to February 13, 1976. We approve paying claimants 20 minutes overtime compensation for each full day they worked retroactive to May 23, 1963, 10 years from the time when they filed their original claims.

*B-211007 September 25, 1984*  
*COMPENSATION--OVERTIME--FAIR LABOR STANDARDS ACT--SLEEP*  
*TIME*

Two nonexempt employees stationed at Sitka, Alaska, were required to perform a 1-day temporary duty assignment on a remote island with transportation to and from the island solely dependent on Govern-

ment aircraft. At their scheduled return time, neither a plane nor a boat could be safely dispatched because of inclement weather. They were forced to remain there overnight without food or shelter. They claim 15 1/2 hours of overtime, but the agency wants to deduct for sleep time. Although not entitled to overtime compensation under 5 U.S.C. 5542, the employees' claims under Fair Labor Standards Act (FLSA), 29 U.S.C. 201 et seq., are allowed. Under FLSA in order for sleep time to be considered noncompensable, adequate facilities must exist for that purpose. Since there were no such facilities and the employees were forced to spend the night in the open, they remained in a compensable duty status the entire time.

*COMPENSATION--OVERTIME--FAIR LABOR STANDARDS ACT--WAITING TIME*

Three nonexempt employees stationed at Sitka, Alaska, were required to perform a multiple-day temporary duty assignment at an isolated site in mid-winter. Transportation to and from that site was solely dependent on Government aircraft. They were to be returned at 9 a.m., on a non-workday, but the plane did not arrive as scheduled. They were each paid for some of the time actually spent on the beach waiting for the plane. The agency denied overtime for other corresponding hours because they had been relieved from duty. They are not entitled to overtime compensation under 5 U.S.C. 5542. Under the Fair Labor Standards Act the employees are only entitled to receive compensation for the hours they spent on the beach waiting for the travel back to Sitka as the waiting time occurred during their corresponding work hours, 8-4:30. They are not entitled to overtime compensation for the time when they were relieved from duty and were not on the beach waiting for the plane.

*B-214880 September 25, 1984*

*COMPENSATION--OVERTIME--FAIR LABOR STANDARDS ACT--FAIR LABOR STANDARDS ACT V. OTHER PAY LAWS*

With the knowledge of her supervisors an employee voluntarily performed extra work at home in an effort to re-

duce a backlog of unprocessed travel vouchers. She is entitled to overtime pay computed under the Fair Labor Standards Act because her supervisors "suffered or permitted" the overtime at home. Since they did not induce her to work at home, she is not entitled to the greater amount of overtime compensation claimed under 5 U.S.C. 5542, which requires that overtime be "officially ordered or approved."

*B-215008 September 25, 1984*

*COMPENSATION--OVERTIME--TRAVELTIME--ADMINISTRATIVELY  
CONTROLLABLE*

An employee claims overtime compensation for the relocation travel he performed on a Sunday in order to report to his new duty station on Monday morning. The time the employee spent in a travel status does not qualify as compensable overtime under 5 U.S.C. 5542, since his travel did not result from an administratively uncontrollable event.

*GENERAL ACCOUNTING OFFICE--JURISDICTION--CIVIL SERVICE  
MATTERS--LIMITATION OF GAO AUTHORITY*

An employee was transferred to a new duty station for 14 months during the resolution of his grievance on a prior improper transfer. The employee alleges that the agency delayed processing his grievance in violation of its own procedures, and that, therefore, he is entitled to temporary duty allowances for his assignment at the new duty station. Matters relating to grievances are within the jurisdiction of the agency and the Office of Personnel Management, and will not be considered by this Office. In any event, corrective action on the employee's grievance did not change his duty status from permanent to temporary, and he may not be paid temporary duty allowances.

*B-215733 Sept. 25, 1984*

*OFFICERS AND EMPLOYEES--TRANSFERS--REAL ESTATE EXPENSES--  
TIME LIMITATION--EXTENSION*

Employee, who applied for an extension of the time period in which to claim reimbursement of real estate expenses,

is not entitled to reimbursement of his selling expenses since his residence was not sold within the 3-year period after his transfer permitted by the Federal Travel Regulations paragraph 2-6.1e, as amended effective October 1, 1982.



MILITARY PERSONNEL

B-215304 July 23, 1984

PAY--RETIRED--SURVIVOR BENEFIT PLAN--BENEFICIARY IMPLICATED  
IN DEATH OF DECEDENT

The wife of a deceased service member claims entitlement to an annuity under the Survivor Benefit Plan, where, in connection with his death, she was tried by jury and acquitted of all criminal charges. The claim may be allowed because the acquittal is sufficient indication of lack of felonious intent, absent further judicial proceedings or unusual circumstances tending to show that the claimant acted with felonious intent.

B-204347 August 22, 1984

NATIONAL GUARD--PAY, ETC., ENTITLEMENT--INJURY, ILLNESS,  
ETC.--HOSPITALIZATION BENEFITS--ILLNESS--DUTY NOT EXCEEDING  
30 DAYS

Members of federally recognized National Guard units and organizations who are disabled by disease while on full-time duty for periods of 30 days or less under 32 U.S.C. 502(f) are eligible for the incapacitation payments and related benefits prescribed by 10 U.S.C. 3722 and 8722, and the implementing regulations. These benefits include continuation of the basic pay and allowances to which they were entitled at the time the disease was contracted for a period of up to 6 months beyond the end of the tour of duty, plus medical care and transportation to and from hospitals. Master Sergeant Howard R. Harper, ARNG, B-204347. December 23, 1981, modified.

B-215000 August 27, 1984

TRANSPORTATION--HOUSEHOLD EFFECTS--MILITARY PERSONNEL--  
EMERGENCY, ETC. CONDITIONS--LACKING

In a family emergency, a military member relied on a transportation agent's approval to arrange for transportation of household goods and travel of dependents to his home of record about 1 month before he applied

for retirement and 6 weeks before retirement orders were issued providing for his retirement a year later. In the absence of military emergency or a written statement from the member's commander advising him that orders would be issued, the transportation officer has no authority to approve personal arrangements for transportation and travel prior to issuance of orders, and regulations dealing with claims procedure provide no authority for payment. The claim for reimbursement of personally arranged, advance transportation and dependent travel costs cannot be paid.

*B-196226 August 30, 1984*

*DEBT COLLECTIONS--WAIVER--MILITARY PERSONNEL--PAY, ETC.--OVERPAID AT DISCHARGE*

A service member who upon retirement had excess leave charged to him totaling a number of days pay to which he was entitled, should not have expected to receive the payment erroneously made to him at retirement. Since the member is not without "fault", he may not be granted waiver for the debt under 10 U.S.C. 2774.

*B-214731 September 4, 1984*

*QUARTERS ALLOWANCE--BASIC ALLOWANCE FOR QUARTERS (BAQ)--CONFINEMENT IN GUARD HOUSE, ETC.--VARIABLE HOUSING ALLOWANCE*

A Marine Corps member received a general court-martial sentence which included confinement at hard labor for 5 years, and forfeiture of pay, but he was entitled to continue receiving basic allowance for quarters at the with-dependents rate. He was subsequently transferred from his duty station at Camp Lejeune, North Carolina, to the Correctional Facility at Camp Pendleton, California, for confinement. He is not entitled to receive a variable housing allowance based on his transfer to the Correctional Facility because he was assigned there for confinement not "for duty" as required by statute.



B-210659 September 5, 1984

TRANSPORTATION--HOUSEHOLD EFFECTS--MILITARY PERSONNEL--  
PACKING, CRATING, DRAYAGE, ETC.--PACKING ALLOWANCE--  
REGULATIONS

The Secretary of the Air Force created a 10 percent packing allowance in Air Force Regulation 75-25 for household goods shipped by the direct procurement method even though subparagraph M8002-3a, 1 JTR prescribes a 20 percent packing allowance for household goods shipped by that method. Since the 20 percent packing allowance is applicable when the weight used to determine the actual weight of the household goods is the gross weight of the shipment less the weight of the empty shipping boxes or transporters, that allowance is not for application when the weight used is the gross weight of the shipment less the weight of the shipping boxes or transporters and the weight of materials necessary for preparing the goods for shipment. In the latter case the 10 percent allowance prescribed by the Air Force is appropriate.

B-214534 September 5, 1984

LEAVES OF ABSENCE--MILITARY PERSONNEL--PAYMENTS FOR UNUSED  
LEAVE ON DISCHARGE--RESERVISTS--ACTIVE DUTY REQUIREMENT  
FOR ACCRUAL

A Navy Reserve officer claims pay for 2-1/2 days of accrued leave on the basis that he performed 30 days of active duty for training. However, during 13 of those days he was in a voluntary non-pay status. The regulations that implement the applicable leave statute require that a member perform 30 consecutive days of active duty while in a pay status in order to be entitled to leave. Since that regulation is reasonably consistent with the purpose and intent of the statute, it is not overly restrictive, and the member is not entitled to leave pay.

B-215037 September 18, 1984

PAY--TRAINING--NATIONAL GUARD--TEMPORARY FEDERAL  
RECOGNITION--EXPIRATION--DE FACTO OFFICER

A person who was appointed as a captain in the Army National Guard received temporary Federal recognition. Since he

performed training duty after the period of temporary Federal recognition had expired under color of authority and without knowledge, either actual or constructive, of the fact that the temporary Federal recognition had expired, he is entitled to retain the pay and allowances received by him in good faith for the service as a de facto officer.

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